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U.S. Citizenship
and Immigration
Services

FILE:

Office: LOS ANGELES, CA

Date: APR 19 2004

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen of the United States and is the beneficiary of an Approved Petition for Alien Relative (WAC-98-066-50802). The applicant seeks the above waiver of inadmissibility in order to reside in the United States with his spouse.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Acting District Director, dated February 20, 2003.

On appeal, counsel contends that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] did not thoroughly examine and analyze all of the facts and evidence submitted; failed to consider each relevant factor in determining if an extreme hardship existed and failed to consider all of the relevant factors in the aggregate when determining if an extreme hardship existed. *See* Attachment to Form I-290B, dated March 21, 2003.

In support of these assertions, counsel submits an affidavit of the applicant's spouse, dated April 7, 2003; a Department of State public announcement, issued March 7, 2003; a copy of the marriage certificate of the applicant and his spouse; a copy of the naturalization certificate of the applicant's spouse and copies of photographs of the applicant, his spouse and family members. The record also contains copies of financial and tax documents for the couple and a copy of the divorce decree of the applicant's spouse and her previous husband. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that during March 1992, the applicant used a passport and nonimmigrant visitor visa bearing a fraudulent name to obtain admission into the United States.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Counsel asserts that CIS failed to consider or address the effects of extreme hardship to a child of the qualifying relative. *See* Attachment to Form I-290B, dated March 21, 2003. The AAO notes that Congress did not include the citizen or lawfully resident child of the applicant among the relatives qualifying for consideration under section 212(i) of the Act. The hardship suffered by the applicant's stepson will therefore be considered only insofar as it contributes to the extreme hardship suffered by the applicant's spouse who is the mother of the applicant's stepson.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's wife would face extreme hardship if she relocated to the Philippines in order to reside with the applicant. Counsel contends that there is a lack of available employment in the Philippines and the jobs that are available require personal connections to obtain. *See* Brief in Support of Appeal, dated April 18, 2003. The applicant's wife lacks the necessary contacts, as she has not resided in the Philippines for over 20 years. *Id.* at 7, 12. Counsel emphasizes that the entire extended family of the applicant's spouse, including her adult son, resides in the United States and that it would be difficult for her to leave the close familial relationships she enjoys. *Id.* at 8. In addition, counsel states that the threat of terrorist attacks on Americans residing in the Philippines is high and the applicant's wife is fearful of the risk of physical harm. *Id.* at 15-16.

The AAO notes that counsel also lists the medical condition of the applicant's wife as a reason that she is unable to relocate to the Philippines. *Id.* at 11. The record indicates that the applicant's wife suffered from gall bladder stones in November 2000 and was placed on medication. *Id.* The record does not demonstrate that the applicant's wife suffers from an ongoing medical condition that requires constant medical care or advanced medical procedures. Counsel states that the applicant's wife "is certain that the doctors [in the Philippines] will not be able to provide her with the suitable medications or treatments she needs to treat her medical ailments..." *Id.* The AAO notes that in the absence of current, identified medical needs, the assertions of the applicant's wife amount to speculation rendering them unpersuasive.

While counsel offers compelling evidence that relocation to the Philippines would impose hardship on the applicant's spouse, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States maintaining her close familial relationships, lucrative employment and access to superior health care. The AAO notes that, as a naturalized citizen of the United States, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The AAO further recognizes that the son of the applicant's wife will endure hardship as a result of separation from the applicant whom he has "grown to see ... as his father" and her son's hardship will likely impact the applicant's wife. *See* Brief in Support of Appeal at 9. The AAO notes, however, that the assertions of hardship to the son of the applicant's spouse are given diminished weight. Although counsel states that the son of the applicant's wife is dependent on the applicant and the applicant's wife financially, the record does not establish that he, as an adult, is unable to provide financially for himself.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.